IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SNYDERMAN, Plaintiff,	:	CIVIL ACTION NO. 97-1592
v.	:	
SOVEREIGN FEDERAL SAVINGS BANK, Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J. November 17, 1997

Plaintiff Paul Snyderman ("Snyderman") seeks over $400,000 in damages from Defendant Sovereign Federal Savings Bank ("Sovereign") for breach of a compensation agreement ("Agreement"). The Court will enter partial summary judgment for Sovereign because the parties' actions subsequent to the Agreement clearly demonstrate their intent that Snyderman receive compensation at a lesser rate than he now claims. The Court also holds that Snyderman's acceptance of payment in January 1996 was an accord and satisfaction of any debt owed to him by Sovereign for monthly incentive payments in 1995 pursuant to the Agreement, and it will enter summary judgment accordingly. The Court will not enter summary judgment as to the remaining issues, that is, whether Snyderman is entitled to payment of any annual incentive compensation for 1995 or 1996, and whether he is entitled to any

monthly incentive payments for 1996. Finally, the Court will deny Plaintiff's Motion to Compel and his Motion In Limine. See infra n.3.

I. BACKGROUND

As Vice President of Secondary Marketing, Snyderman sold mortgage loans for Sovereign. His direct supervisor was Senior Vice President Robert J. Cunnane ("Cunnane"). Prior to 1995, the two men had an unwritten incentive compensation agreement under which Snyderman received $75.00 for every $1 million dollar loan pool he sold with a specific minimum value (37.5 basis points of net income).[1] Snyderman's compensation plan thus entitled him to a .75 basis point "bonus" for specific transactions.

In 1995, Snyderman and Cunnane discussed increasing Snyderman's compensation. Cunnane prepared a memorandum dated March 1, 1995 ("Agreement") which enlarged the scope of transactions for which Snyderman would receive credit. This memorandum also contained a basis point compensation formula ten times what Snyderman previously received. Thus, for example, where Snyderman had previously received .75 basis points in compensation for the sale of most loans, the Agreement stated his incentive formula as 7.5 basis points. (Although the Agreement

1. Basis point is a term of art in financial markets, used here to describe mortgage loans. 100 basis points = .01 = 1.0%. 1 basis point = .0001 = 0.01%.

provided for other compensation rates, the majority of transactions were covered by the .75 rate, and the Court will accordingly refer to the lesser rate as the ".75" rate). In an affidavit attached to Sovereign's Summary Judgment Motion, Cunnane maintains that the memorandum contains an incorrectly-placed decimal point and does not accurately reflect the actual Agreement. The Agreement also provided for an annual, as distinguished from monthly incentive compensation, provided that the gross amount of all loans Snyderman sold reached a certain point, and it stated that the incentive compensation Agreement would "continu[e] until changed or eliminated by" Cunnane.

On June 12, 1995, Snyderman requested his monthly incentive compensation for the first five months of 1995, and he based this request on the lesser basis point calculation. Subsequently, Cunnane twice determined that Snyderman had violated Sovereign policy regarding loan transactions, and he prepared a November 1, 1995 memorandum stating that Snyderman "agreed to forego any commissions since his last payment until the end of 1995. At my discretion, an incentive program may be discussed at that time."

In January 1996, Snyderman demanded $14,946.04 as his incentive compensation for the last seven months of 1995. Like his June 1995 compensation request, Snyderman clearly based this demand on the lesser basis point incentive formula. Although

Cunnane maintained that Sovereign owed no incentive compensation to Snyderman, he nonetheless paid him $7, 743.01, noting on the face of Snyderman's written demand that: "As a result of the formal reprimand, which states that Paul was not to receive any incentives, I believe that a 50% reduction to incentives is appropriate at this time." Snyderman accepted payment, signed his name under Cunnane's handwritten notation and wrote "ok."

Sovereign terminated Snyderman's employment on March 15, 1996. His Amended Complaint for breach of compensation agreement seeks:

a. $165,715 for incentive compensation from January 1, 1995 to May 31, 1995;

b. $149,460 for incentive compensation for the period June 1, 1995 to December 31, 1995;

c. $34,735.59 for incentive compensation due for January 1996;

d. $26,861.65 for incentive compensation for February 1996;

e. $24,765.19 for incentive compensation for March 1996;

f. $23,920.37 for incentive compensation for April 1996;

g. A further, undetermined amount of incentive compensation for April 1996;

h. An undetermined amount of incentive compensation for May 1996;

i. $24,045.92 for an annual incentive compensation for 1995;

j. An undetermined amount of annual incentive compensation for 1996.

Sovereign's Answer raised the affirmative defenses of waiver; equitable estoppel; accord and satisfaction; release; and statute of limitations. Sovereign also counterclaimed against Snyderman for negligent performance of duties. Sovereign has now moved for summary judgment again arguing waiver; equitable estoppel; and accord and satisfaction. Additionally, Sovereign has raised the affirmative defense of mutual mistake, and it argues that it has paid Snyderman everything to which he was entitled, and that the November 1, 1995 memorandum terminated the Agreement.

II. DISCUSSION

A. Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if it might affect the outcome of the case under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A disputed factual matter presents a genuine issue "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."

Id. In considering a summary judgment motion, the court is required to accept as true all evidence presented by the non-moving party, and to draw all justifiable inferences from such evidence in that party's favor. Id. at 255.

B. The Compensation Agreement

1. Reformation of Contract

Sovereign requests the Court to equitably reform the Agreement to reflect the parties' actual intent, i.e., that Snyderman be compensated according to the lesser basis point calculation.[2] Pennsylvania law permits a party to introduce parol evidence to demonstrate that a mutual mistake has occurred in a contract and that it does not truly express the parties' intent. Bugen v. New York Life Ins. Co, 184 A.2d 499, 500 (Pa. 1962). The evidence must be "clear, precise and convincing," id., and it "must be established by two witnesses, or by one witness and corroborating circumstances." Id. at 501. Under the related doctrine of scrivener's error, "the mistake of a scrivener in drafting a document may be reformed based upon parol

2. Snyderman has also filed a motion in limine seeking to exclude Cunnane's testimony in support of Sovereign's mistake defense, on the grounds that Sovereign did not plead mistake as an affirmative defense in its Answer and thus has waived the defense pursuant to Federal Rule of Civil Procedure 8 (c). The Court will not hold the mistake defense waived, because, although Snyderman asserts that he first learned of the mistake defense when reading Sovereign's pretrial motion, Sovereign raised it in its motion for summary judgment. Snyderman did not object to the mistake defense in its Answer to the summary judgment motion, nor has he alleged or demonstrated surprise or prejudice. See Kleinknecht v. Gettysburg College, 989 F.2d 1360, 1374 (3d Cir. 1993); cf., Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1197 (3d. Cir. 1993) (defendant waived affirmative defense by not raising it in either Answer or joint pretrial order.

evidence, provided the evidence is 'clear, precise, convincing and of the most satisfactory character' that a mistake has occurred and that the mistake does not reflect the intent of the parties." International Union v. Murata Erie North America, 980 F.2d 889, 907 (3d Cir. 1992) (quoting In re Estate of Duncan, 232 A.2d 717, 720 (Pa. 1967)); see also Hyde Athletic Industries v. Continental Cas. Co., 969 F.Supp. 289, 309 (E.D.Pa. 1997).

The Court finds that Cunnane's unrefuted affidavit and Snyderman's conduct subsequent to the Agreement demonstrate unequivocally that the parties intended compensation to be based on the .75 basis point formula. Snyderman sought and accepted compensation based on the .75 formula for the first five months of 1995, and in January 1996 he sought compensation for the last seven months of 1995 based on that same formula. Further, Snyderman's deposition testimony demonstrates his belief that the agreement provided for the lesser incentive amount, because he stated that he expected to receive between $100,000 - 125,000 annually as a result of the changes, (Snyderman depo. at 58), an amount which would not reflect a tenfold increase in incentive compensation. Finally, Cunnane's specific memory regarding the Agreement contrasts unfavorably with Snyderman's inability to recall any details about the agreed-upon basis point formula. (Snyderman deposition at 52-53).

Sovereign's summary judgment motion put the onus on Snyderman to move beyond the Agreement and proffer some other evidence which would support the existence of a fact issue regarding the parties' intent. He points only to his memory that Cunnane promised to "take care" of him, i.e., to increase his compensation. (Snyderman depo. at 51, 58). Assuming, as the Court must for purposes of summary judgment, that Cunnane did so promise, Snyderman still cannot create a fact issue regarding intent, as the Agreement did indeed "take care" of Snyderman by expanding the scope of transactions for which he would receive compensation. See also J.W. Goodliffe & Son v. Odzer, 423 A.2d 1032, 1035 (Pa. 1980) (a party's conduct may operate as a waiver of any contract term inconsistent with actual course of performance).[3] The Court finds that no reasonable jury could return a verdict for Snyderman on the issue of intent, and it will enter summary judgment for Sovereign to the extent that the Agreement shall be deemed reformed as to the basis point formula, in accordance with the Court's order.

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3. Moreover, in response to Sovereign's argument that he is equitably estopped from asserting a right to compensation at the higher rate, Snyderman contends that he submitted these requests at the lower rate because he was using an "old Lotus format." This contention is not supported by the deposition testimony Snyderman references. Further, Snyderman strains credulity to the breaking point when he implies that he was somehow unaware that he was being compensated at a rate ten times less that he was entitled to. Even assuming the truth of an unsupported assertion contained only in Snyderman's Answer, it would not go to Sovereign's reasonable reliance on the compensation request, as any reliance would have been on Snyderman's conduct rather than on his allegedly faulty reasoning for that conduct. Regardless, the Court does not base entry of summary judgment on equitable estoppel.

Further, the Court finds that Snyderman's acceptance of $7,743.01 in January 1996 was an accord and satisfaction of any debt for outstanding monthly, as distinguished from annual, incentive payments for 1995. That transaction meets the elements of accord and satisfaction: a disputed debt; a clear and unequivocal offer of payment in full satisfaction of the debt; and acceptance and retention of payment by the offeree. See Goodway Marketing, Inc. V. Faulkner Advertising Assocs., Inc., 545 F.Supp. 263, 266 (E.D.Pa. 1982) (citing Law v. Mackie, 95 A.2d 65 (Pa. 1953)). Reformation of the Agreement to contain the lesser basis point formula renders moot Snyderman's dubious argument that Sovereign cannot demonstrate a "disputed debt," because no dispute actually arose until he discovered in March 1996 that he was owed ten times as much compensation. The Court will therefore also enter summary judgment for Sovereign to the extent that Snyderman seeks further monthly compensation payments for 1995.

The Court finds that the record does not, at this time, permit resolution of the status of the Agreement following Cunnane's November 1, 1995 memorandum. Accordingly, the Court will not enter summary judgment regarding Snyderman's claims for annual incentive compensation for 1995 or 1996, or for monthly compensation for any month in 1996. Of course, any determination

of the maximum value of Snyderman’s remaining claims must be based upon the lesser basis point formula.

An appropriate Order follows.

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O R D E R

AND NOW, this 17th day of November 1997, upon consideration of Defendant's Motion for Summary Judgment (Dkt. #10); Plaintiff's Answer thereto (Dkt.# 14); and Defendant's Reply (Dkt. #18); and upon consideration of Plaintiff's Motion In Limine,(Dkt. #16), and Defendant's Answer thereto (Dkt. #21); and upon consideration of Plaintiff's Motion to Compel (Dkt. #17), and Defendant's Answer thereto (Dkt. #19), it is hereby ORDERED that:

(1) The Motion for Summary Judgment is GRANTED IN PART AND DENIED IN PART. The Motion is GRANTED to the extent that:

(a) The March 1, 1995 Compensation Agreement shall be reformed to the extent that Section A-1 of the Agreement shall read ".75 basis points"; Section A-2 of the Agreement shall read ".5 basis points"; and, Section A-3 of the Agreement shall read ".5 basis points"; the numbers in Section B shall read ".65"

basis points . . .[;] .6 basis points . . .[;] .5 basis points . . .[; and] .3 basis points";

(b) Plaintiff's claim for any additional monthly compensation for January 1995-May 1995 is DISMISSED WITH PREJUDICE;

(c) Plaintiff's claim for any additional monthly compensation for June 1995-December 1995 is DENIED WITH PREJUDICE;

(d) In all other respects, Defendant's Motion for Summary Judgment is DENIED WITHOUT PREJUDICE;

(2) Plaintiff's Motion In Limine is DENIED; and,

(3) Plaintiff's Motion to Compel is DENIED.

BY THE COURT:

RONALD L. BUCKWALTER, J.